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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 1046.

PEOPLE OF THE STATE OF ILLINOIS ex rel. GEORGE MUSSO, Madison County Treasurer and Ex-Officio Collector of Taxes of Madison County, Illinois,
Appellants,
vs.
CHICAGO, BURLINGTON AND QUINCY RR. CO., CHICAGO & NORTHWESTERN RR. CO., GULF, MOBILE AND OHIO RR. CO., CHICAGO AND EASTERN ILLINOIS RR. CO., ILLINOIS CENTRAL RR. CO., NEW YORK CENTRAL RR. CO., NEW YORK, CHICAGO & ST. LOUIS RR. CO., WABASH RR. CO., PENNSYLVANIA RR. CO., ILLINOIS TERMINAL RR. CO., ALTON & SOUTHERN RR. CO., and TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
Appellees.

On Appeal from the Supreme Court of Illinois.

APPELLEES' OBJECTIONS TO FILING OF BRIEF AMICI CURIAE.

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Appellees have withheld consent and object to the filing of a brief amici curiae by Illinois Association of School Boards and Illinois Municipal League in support of Appellant's Jurisdictional Statement and in opposition to Appellees' Motion to Dismiss for the following reasons:

a) **MOTION FOR LEAVE TO FILE IS UNTIMELY**: A motion for leave to file a brief amici curiae in support of the jurisdictional statement at this late date is not in accord with Rule 42 (1) of the United States Supreme Court which requires that such a motion be submitted a reasonable time prior to the consideration of the jurisdictional statement. The Notices of Appeal in the instant cases were served on December 23, 1965, and the Jurisdictional Statement on February 21, 1966. On March 23, 1966, Appellees filed a motion to dismiss these appeals and the Court has granted counsel for Appellant an extension of time to April 25, 1966, in which to file a response to the motion to dismiss. Since the Court's rules do not permit Appellees to file a response to a brief amici curiae, it is no doubt contemplated that such a brief must be filed prior to the expiration of the time to file a motion to dismiss, otherwise Appellees will be unjustly deprived of the opportunity to answer the arguments presented in the brief. From the contents of their motion, it is obvious that both of these organizations have long been aware of the existence of this litigation and there is no excuse for delaying the submission of this motion until nearly seven weeks after the filing of the jurisdictional statement and just as the Court is ready to consider the statement and motion.

b) **NO AUTHORITY FOR A BRIEF AMICI CURIAE IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM**: Rule 42 of the United States Supreme Court provides only for the filing of a brief amicus curiae in support of a jurisdictional statement, petition for writ of certiorari, or on the merits. No authority exists for the filing of such a brief in respect to a motion before this Court.

c) **THE MOTION FAILS TO JUSTIFY THE FILING OF A BRIEF AMICI CURIAE**: Rule 42 (3) requires that

the motion "set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case." The motion does not comply with this requirement. Appellant's jurisdictional statement is 46 pages in length plus 70 pages of appendices and Appellant has filed with the Clerk of this Court additional documents to which references are made in the statement. Appellant also intends to file an additional brief in opposition to Appellees' motion to dismiss or affirm and the instant motion states no reasons to believe that Appellant's brief will be an inadequate response. There has been ample opportunity to discuss the facts and pursue all arguments in support of the jurisdictional statement and in opposition to Appellees' motion, and no justification exists for filing any additional briefs amici curiae.

d) **MEMBERS OF THESE ASSOCIATIONS ARE ALREADY REPRESENTED**: These associations represent school boards, cities, villages and incorporated towns located in the State of Illinois. They are public agencies of, and represented by, the People of the State of Illinois, Appellant, which has been held to be the real party in interest in tax objection litigation.[1] The State's Attorney of Madison County, counsel for Appellant, has the legal duty to represent all taxing districts in his county in proceedings concerning the legality and collection of taxes, which includes members of these associations. The Illinois Supreme Court has held that he alone can represent the taxing districts in such litigation and employment of private counsel is unauthorized.[2] Thus the members

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[1] People ex rel. Murray v. The City of St. Louis, 297 Ill. 199, 201, 130 N. E. 366.

[2] People ex rel. School District No. 88 v. Holland, 384 Ill. 277, 51 N. E. 2d 266; Ashton v. County of Cook, 384 Ill. 287, 51 N. E. 2d 161; and Opinions of Attorney General of State of Illinois, 1953, No. 17, p. 66.

of these associations are already represented by counsel for Appellant and should not be permitted to accomplish indirectly what they are prohibited from doing directly.

Respectfully submitted,

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